

# **MINUTES**

## **TENNESSEE BOARD OF MEDICAL EXAMINERS**

**January 24 and 25, 2006**

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The meeting was called to order at 9:00 a.m. in the Cumberland Room, Ground Floor of the Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee 37247-1010, by President Dr. David Cunningham. Other members present were: Drs. Allen Edmonson, Subhi Ali, Michael Zanolli, George Eckles, Charles White, Sr., Mitchell Mutter, Barbara Engelhardt, Keith Lovelady, Ms. Nina Yeiser, Ms. Mary Johnson and Mr. Mark Brown. Staff present included: Rosemarie Otto, Executive Director, Dr. Larry Arnold, Medical Director, Marsha Arnold, Unit Manager, Sandra Powell, Board Administrator and Mr. Robert Kraemer, Advisory Attorney.

### **Minutes**

Minutes from the November 15 and 16, 2005 meeting were reviewed. Ms. Yeiser made a motion to accept the minutes and Dr. White seconded the motion. The motion carried.

### **Ratification of Licenses**

New, reinstated, failed to renew and voluntarily retired licenses for Medical Doctors, Medical X-Ray Operators, Athletic Trainers, Physician Assistants, Committee on Clinical Perfusionists and Acupuncture Committee were reviewed. Dr. Zanolli made a motion to ratify the approval of licenses. Dr. Ali seconded the motion. The motion carried.

### **New Applicant Interviews**

**Patricia Rose Walters, MD-**Dr. Walters is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Walters' application file for the Board. Dr. Walters' entered into an Agreed Order and surrendered her medical license in Tennessee due to inappropriate prescribing and unprofessional conduct. Dr. Roland Gray, Medical Director for the Tennessee Medical Foundation spoke on behalf of Dr. Walters and stated that Dr. Walters has successfully completed treatment and experienced no relapses. Dr. Mutter made a motion to grant Dr. Walters a license and Dr. White seconded the motion. The motion carried.

### **Reinstatement Interviews**

**William Blunt Mitchell, MD-**Dr. Mitchell is applying for reinstatement of his Tennessee medical license. Dr. Arnold explained to the Board that Dr. Mitchell was irate with him and the staff during the application process. The Board asked Dr. Mitchell questions regarding his reasons for leaving Tennessee and Ohio. Dr. Mutter and Dr. Ali discussed the rising incidents of disruptive physicians and their impact on hospital administration. Dr. White made a motion to grant Dr. Mitchell reinstatement contingent upon receipt of satisfactory completion of the Vanderbilt or Miami disruptive physician course. Dr. Mutter seconded the motion. Mr. Brown and Dr. Zanolli opposed. The motion passed.

**Robert L. Kale, MD-**Dr. Kale is applying for reinstatement of his medical license. Dr. Arnold reviewed Dr. Kale's application file for the Board. Dr. Kale had action taken against his Arkansas license and DEA privileges. Dr. Kale explained to the Board the nature of the charges against his DEA certificate. Dr. Kale's attorney spoke on behalf of Dr. Kale and explained the rules of the Arkansas Board. Documentation from Arkansas suggests that Dr. Kale's medical license is not free and clear. Dr. Kale is appealing Arkansas' order. Dr. Edmonson made a motion to deny Dr. Kale's reinstatement until he has complied with the order in Arkansas or gave him the option to withdraw his application. Dr. Kale requested to withdraw his reinstatement application.

**William H. Hass, MD-**Dr. Hass is applying for reinstatement of his medical license. Dr. Arnold reviewed Dr. Hass' application file for the Board. Dr. Hass has a significant amount of malpractice cases. The Board asked questions regarding the malpractice case. After further questions, the Board gave Dr. Hass the option to withdraw his application or it would be the subject of a motion to deny. Dr. Hass decided to withdraw his application.

### **Ratification of Orders submitted by the Board of Medical Examiners' Committee on Physician Assistant's**

Mr. Shiva Bozarth with the Office of General Counsel presented the Board with the following Physician Assistant orders to be ratified by the Medical Board.

**Joel Burnett, PA-**Mr. Bozarth handed out the Order to the Board for review. Dr. White made a motion to ratify the PA's Order and Ms. Johnson seconded the motion. The motion carried.

**Jared Manning, OPA-**The Letter of Reprimand and Order was handed out to the Board for review. Dr. White made a motion to ratify order and Dr. Ali seconded the motion. The motion carried.

**Patricia Moynihan, MD-**The proposed Consent Order was handed out to the Board for review. Dr. Moynihan is charged with violating TCA 63-6-214(b) (4). The proposed Order states that Dr. Moynihan agrees to surrender her Tennessee medical license for the purpose of avoiding further administrative action. Dr. Mutter made a motion to accept the proposed Order and Ms. Yeiser seconded the motion. Dr. Engelhardt abstained. The motion carried.

### **Rule Action**

Jerry Kosten, Rules Coordinator, informed the Board of the rulemaking hearing which was held January 19, 2006 regarding changes in advertising rules, amendment to the Office Based Surgery rule about operating rooms, control and responsibility for medical services being provided by Allied Health Professionals and certification on death certificates. Mr. Kosten informed the Board that one person attended the hearing and there were no comments. Mr. Brown made a motion to adopt the rules and Ms. Yeiser seconded the motion. A roll call vote was conducted and the motion was adopted by a unanimous vote.

Mr. Kosten reviewed the rule regarding stays, reconsiderations and rewrites of the PC-LLC for Committee on Physician Assistants. Ms. Yeiser made a motion to adopt the rule and Dr. Edmonson seconded the motion. After a roll call vote, the rule was adopted by unanimous vote.

### **Discussion**

Dr. White discussed nurse practitioners owning their own practices and hiring physicians to act as supervisors. Mr. Kraemer reviewed discussions the Board had previously regarding nurse practitioners owning their own practices and hiring physicians for the purpose of supervision. Dr. White suggested drafting another letter to the Attorney General's office for another opinion. Mr. Kraemer gave his suggestions in regards to the letter. Dr. Ali made a motion requesting Mr. Kraemer to draft a letter to the Attorney General's office on behalf of the Board. Dr. White seconded the motion. The motion carried.

Dr. Kenneth Robinson, Commissioner for the Department of Health addressed the Board. Dr. Robinson took the time to express his appreciation to the Board and their colleagues for all the work they have accomplished not only on the Board, but also in their private practices in support of the TennCare Safety Net. Dr. Robinson also thanked the Board for their input in working on the Prescribing Task Force and identifying those physicians who are overprescribing.

Ms. Otto reviewed Dr. McKenzie's letter to the Board and Mr. Kraemer's response to the letter regarding prescribing for oneself or one's family. Dr. McKenzie's request was for the Board to define "family member". Mr. Kraemer will compose a letter in regards to Dr. McKenzie's request.

Mr. Kraemer reviewed the letter from William Hubbard regarding the Tennessee Hospital Association's withdrawal of its petition for a Declaratory Order. The Board discussed the Tennessee Medical Association's response to the Tennessee Hospital Association regarding the Office Based Surgery rules.

Dr. J. Cameron Hall, President for the Tennessee Society of Pathologists addressed the Board. Also addressing the Board was Dr. Edward McDonald, Pathologist at St. Thomas

Hospital and Dr. Teresa Emory, Pathologist from Bristol, Tennessee. Dr. Cunningham recognized the physicians and gave them each ten minutes to address the Board. Dr. Hall informed the Board that there continues to be a problem with client billing. The Board presented questions to Dr. Hall regarding billing problems. Dr. Hall informed the Board that there are still many physicians involved in “client billing” despite the enactment of TCA 63-6-214 (b) 22. Mr. Kraemer stated that if complaints are filed, these physicians can be prosecuted.

Dr. Hall asked for clarification of the difference between an advisory ruling and a declaratory order. Mr. Kraemer explained to the Board that they needed to decide whether to deny the declaratory order petition that was filed regarding the issue of client billing for pathology services or whether to convene a contested case to issue a declaratory order on the subject. Dr. Edmonson made a motion to deny the declaratory order and Dr. Ali seconded the motion. The motion passed.

Ms. Otto stated that one board member needed to be nominated to be a voting delegate at the annual meeting of the Federation of State Medical Boards to be held in Boston, MA April 20-22, 2006. Dr. Zanolli made a motion to nominate Dr. Lovelady as the member to attend the meeting and Dr. Edmonson seconded the motion. The motion passed.

Ms. Otto informed the Board of the contract renewal with the Tennessee Medical Foundation. Dr. Eckles made a motion to authorize renewal of the contract and Dr. Edmonson seconded the motion. The motion carried.

## **Reports**

### **Budget Report**

The budget report was reviewed by the Board. Ms. Otto stated that the Board continues to have a surplus.

### **Director’s Report**

Ms. Otto reviewed her report for the Board. Dr. Eckles was given a warm welcome back. Dr. Eckles replaces Dr. Sam Barnes who will be greatly missed. Ms. Otto reviewed information regarding the Federation of State Medical Boards’ annual meeting.

### **Investigation Report**

Ms. Denise Moran, Director for the Bureau of Investigations gave her report. Ms. Moran informed the Board that for the year 2005, the Bureau received seven hundred thirty-one (731) complaints.

### **Disciplinary Report**

Ms. Lea Phelps, Disciplinary Coordinator reviewed her report for the Board. The number of suspensions, probations and total amount of civil penalties collected was reviewed.

## **OGC Report**

Mr. Robert Kraemer reviewed his report for the Board and the rules that are in the Attorney General's Office. Mr. Kraemer stated that the Office of General Counsel currently has one hundred and thirty (130) open cases against physicians or x-ray technicians that are being processed for disciplinary action before the Board.

### **“Noteworthy” section of the internet**

Ms. Otto informed the board that the information regarding death certificates was put out on the internet after the last meeting. There was not any new information that the Board wanted designated on the internet.

## **Disciplinary Action**

**January 25, 2006**

### **Cumberland Room**

Panel: Eckles, Johnson, Engelhardt, Yeiser, Edmonson, Lovelady, Ali

### **Consent Orders**

**Robert C. Allen, MD**-Dr. Allen was not present nor represented by legal counsel. Mr. Robert Kraemer represented the State. The proposed Consent Order was handed out to the panel for review. Dr. Allen is charged with violating TCA 63-6-214 (b) (2). Dr. Allen was convicted on July 28, 2005 in the General Sessions Court of Washington County, Tennessee of one count each of Driving under the Influence, Violation of the Implied Consent law and Evading Arrest all of which were misdemeanors. The proposed Order states that Dr. Allen's medical license is placed on probation for a period of not less than five (5) years. Dr. Allen shall enter into and fully comply with all terms of an advocacy contract with the Tennessee Medical Foundation for the entire period of his probation. At the end of the probationary period, Dr. Allen must petition and appear before the Board for issuance of an Order of Compliance before the probation can be lifted. Dr. Ali made a motion to accept the proposed Consent Order and Dr. Edmonson seconded the motion. The motion passed unopposed.

**Richard Kienzle, MD**-Dr. Kienzle was neither present nor represented by legal counsel. Mr. Thomas Miller represented the State. The proposed Consent Order was handed out to the panel for review. On June 14, 2005, the State filed a Notice of Charges against Dr. Kienzle alleging multiple violations of the Tennessee Medical Practice Act. On July 20, 2005, an Agreed Order between Dr. Kienzle and the Board was entered wherein Dr. Kienzle agreed that he had violated the rules and statutes of the Practice Act. Dr. Kienzle was charged with violating TCA 63-6-214 (b)(1), TCA 63-6-214 (b)(2), TCA 63-6-214 (b)(3), TCA 63-6-214 (b)(4), TCA 63-6-214 (b)(5), TCA 63-6-214 (b)(12), TCA 63-6-214 (b)(13), TCA 63-6-214 (b)(14), TCA 63-6-214 (b)(18), TCA 63-6-214 (b)(20), O.C.R.R.S.T. 0880-2-.14(6), O.C.R.R.S.T. 0880-2-.14(7) and O.C.R.R.S.T. 0880-2-.18. Dr. Kienzle's license to practice medicine in the State of Tennessee was immediately

surrendered. On July 27, 2005, an investigator for the Health Related Boards observed Dr. Kienzle writing in a patient's medical record and writing a prescription for the patient. The proposed Consent Order stated that Dr. Kienzle shall pay three (3) Type A civil penalties in the amount of one thousand dollars (\$1,000) each for the total amount of three thousand dollars (\$3,000), within three (3) months from the effective date of the Order. Ms. Johnson made a motion to accept the proposed Consent Order and Dr. Engelhardt seconded the motion. The motion passed unopposed.

**Phillip B. Michael, MD**-Dr. Michael was neither present nor represented by legal counsel. Mr. Thomas Miller represented the State. The proposed Consent Order was handed out to the panel for review. Dr. Michael is charged with violating TCA 63-6-214 (b)(1), TCA 63-6-214 (b)(2), TCA 63-6-214 (b)(3), TCA 63-6-214 (b)(4), TCA 63-6-214 (12), TCA 63-6-214 (b)(13), TCA 63-6-214 (b)(14), O.C.R.R.S.T. Rule 0880-2-.14 (6)(e)(3) and O.C.R.R.S.T. Rule 0880-2-.14 (7). From approximately April 1, 2004 until April 15, 2005, Dr. Michael was employed by John T. Hancock, MD. On or about December 16, 2003, Dr. Hancock pled guilty to two (2) Class A misdemeanors of Attempted Forgery by attempting to pass a writing which purported to be a legitimate prescription for Oxycontin, authorized by a licensed medical doctor. Dr. Hancock's Drug Enforcement Administration license to possess and prescribe controlled substances was surrendered for two (2) years. Prior to agreeing to work for Dr. Hancock, Dr. Michael did become aware of these facts. During the period of employment, Dr. Michael's duties were to oversee Dr. Hancock. These duties included reviewing Dr. Hancock's medical treatment records of the patients for which Dr. Hancock had determined that narcotic analgesics and other controlled substances were medically necessary. Once satisfied that Dr. Hancock's progress notes and treatment plan were consistent, Dr. Michael would sign the pre-printed prescriptions for narcotic analgesics and/or other controlled substances. Dr. Michael admitted to an investigator for the Health Related Boards that for a period of several months, he would go to Dr. Hancock's office only one (1) day per week, review medical records and sign prescriptions. Dr. Michael admitted that he signed prescriptions for controlled substances for patients for which he did not personally conduct a physical examination, make a diagnosis, or formulate a therapeutic plan. The seventeen (17) patients were given approximately three hundred fifty-two (352) individual controlled substance prescriptions. The proposed Consent Order stated that Dr. Michael's Tennessee medical license shall be placed on probation for a period of five (5) years commencing from the effective date of Order. Dr. Michael shall attend and complete, within twelve (12) months from the effective date of the Order, the three day seminar entitled: *"Prescribing Controlled Drugs: Critical Issues and Common Pitfalls"*, which is offered at the Center for Professional Health at Vanderbilt University Medical Center in Nashville, Tennessee and provide proof of attendance to the Board within twelve (12) months from the effective date of the Order. Dr. Michael shall attend and complete, within twelve (12) months from the effective date of the Order, the course entitled: *"Intensive Course in Medical Record Keeping"*, which is offered at the Case School of Medicine at Case Western University, in Cleveland, Ohio and provide proof of attendance to the Board within twelve (12) months from the effective date of the Order. Dr. Michael shall pay seventeen (17) Type A civil penalties in the amount of one thousand dollars (\$1,000) each, for the total amount of seventeen thousand dollars (\$17,000.00), within six (6) months from the effective date of the Order. Dr. Engelhardt made a motion to accept the proposed Consent Order and Dr. Edmonson seconded the

motion. Dr. Eckles and Ms. Yeiser opposed. The motion passed.

**Adjourned at 3:30 p.m.**

**January 24 and 25, 2006**

**Magnolia Room**

**1/24-2:30 p.m.**

**1/25-9:00 a.m.**

Panel: Brown, Cunningham, Mutter, white

**Contested Case Hearing**

**Curtis Buchheit, MD**-Dr. Buchheit was present and represented himself.

The case is a continuation from the November, 2005 meeting and will be continued at the next scheduled meeting which will be held March 14 and 15, 2006.

**Disciplinary Action**

**January 25, 2006**

**Tennessee Room**

Panel: Ali, Edmonson, Johnson

**Contested Case Hearing**

**Gregory Wiley, MD**-Dr. Wiley was present and represented by legal counsel, Mr. Charles K. Grant. Mr. Shiva Bozarth represented the State. The Honorable Bettye Springfield, Administrative Law Judge presided. The suggested Stipulations were handed to the panel for review. Also included in the handouts was an Agreed Order from 2001, an Order from 2003 and a Notice of Charges from 2005. Mr. Bozarth gave his opening statement followed by Mr. Grant. Dr. Wiley was disciplined by the Board on August 16, 1999. Dr. Wiley was found to have engaged in unprofessional and unethical conduct; dispensing, prescribing or otherwise distributing any controlled substance or any other drug in violation of the State or United States, making false statements or representations in obtaining admissions to practice medicine and disciplinary action in another state. As a result, his license to practice medicine in Tennessee was revoked and the revocation was stayed for two (2) years. In the 2001 Agreed Order, Dr. Wiley was charged with violating TCA 63-6-214 (b) (1) and TCA 63-6-214 (b) (18). The Agreed

Order stated that Dr. Wiley's medical license continued as revoked and revocation being suspended for two (2) years, maintain the advocacy with the Tennessee Medical Foundation, work under the supervision of Milton Smith, MD and William Lyles, MD and submission of quarterly reports from Dr. James Nash. The Stipulations stated as evidence that the twelve letters from Complete Family Medicine a/k/a The Doctor's Group shows the Dr. Milton Smith either signed his name or gave permission to Dr. Wiley to sign Dr. Smith's name on each of the letters. The letters bearing Dr. William E. Green's signature were signed by Dr. Green. Dr. Steven R. Johnson signed each of the letters. Mr. Bozarth read the depositions with Dr. Lyles, Dr. Smith and Floyd Brown, DO. Mr. Grant followed with his depositions. Mr. Grant called Stephen Johnson, MD as a witness. Mr. Bozarth followed with his cross-examination. Dr. Wiley was called as a witness. Dr. Wiley stated that Dr. Smith gave him permission to sign his (Dr. Smith) name. After Mr. Bozarth's cross-examination, the panel presented their questions to Dr. Wiley. Closing statements were given by Mr. Bozarth and Mr. Grant. The panel deliberated. Ms. Johnson made a motion to accept Finding of Facts # 14, 16, 18, 21, 24, 27, 30, 33, 38, 41, 44, and 47. Dr. Edmonson seconded the motion. The motion carried. Dr. Edmonson made a motion to accept Cause of Action #49 and Ms. Johnson seconded the motion. The motion passed. Dr. Edmonson made a motion to accept # 19 on the 2003 Order with the amendment to rename two of the supervising physicians agreed upon by both attorneys, who will inform each individual supervisor of their duties within thirty (30) days of the proposed Order. Ms. Johnson seconded the motion. The motion passed. Ms. Johnson made a motion to accept civil penalties with the amendment of twelve (12) Type B civil penalties in the amount of five hundred dollars (\$500.00) each, for a total of six thousand dollars (\$6,000.00). Dr. Edmonson seconded the motion. The motion passed. Ms. Johnson made a motion to include the cost of the proceedings and Dr. Edmonson seconded the motion. The motion passed. The policy statement was read and the reason the actions were taken was to protect the health, safety and welfare of the citizens of the State of Tennessee. Ms. Johnson made a motion to accept the policy statement and Dr. Edmonson seconded the motion. The motion passed.

## **Cumberland Room**

**9:00 a.m.**

Panel: Lovelady, Eckles, Yeiser

## **Contested Case Hearings**

**Michael William Bell, MD**-Dr. Bell was present and represented by legal counsel, Mr. Dan Warlick. Ms. Lexie Whittemore represented the State. The Honorable Cara Harr, Administrative Law Judge presided. Mr. Warlick and Ms. Whittemore each gave their opening statements. Ms. Whittemore presented the Notice of Charges and the Rules and Statutes to the panel for review. Dr. Bell is charged with violating TCA 63-6-214 (b) (1). Up until approximately August 17, 2004, Dr. Bell allowed his nursing staff to write prescriptions for patients. Dr. Bell permitted his nurses to sign his name as the signing prescriber and then sign the nurse's signature. This practice was predicated on a verbal order and/or a notation in the medical record. The prescriptions presented to the pharmacies to be filled did not have a signature of a licensed physician or other licensed



health care provider authorized to issue written prescriptions and/or medical orders to pharmacies. Closing statements were given by Mr. Warlick and Ms. Whittemore. The panel deliberated. Dr. Eckles made a motion to accept the Notice of Charges and Dr. Lovelady seconded the motion. The motion carried. Dr. Eckles made a motion that there was no cause of action for unprofessional, dishonorable or unethical conduct. A second was followed by Dr. Lovelady. The case was dismissed.

**James Evans Carter, MD**-Dr. Carter was present and represented by legal counsel, Mr. Tim McIntrye. Mr. Thomas Miller represented the State. The Honorable Cara Harr, Administrative Law Judge presided. Opening statements were given by both attorneys. The Notice of Charges, Kentucky's Order and copies of the Rules were handed to the panel for review. Dr. Carter is charged with violating TCA 63-6-214 (b) (1) and TCA 63-6-214 (b) (20). On January 13, 2005, Dr. Carter's Kentucky medical license was disciplined. On May 13, 2002, the Board received a grievance from the Inspector and Investigator with the Kentucky Board of Pharmacy. It was reported that during two recent routine inspections in Thompkinsville, Kentucky, several pharmacists expressed concerns about the quantity and frequency of controlled substance prescriptions being written by Dr. Carter. According to local pharmacists, patients were returning to Dr. Carter weekly or every other week to obtain Tylox, Lorcet Plus or Alprazolam. This pattern continued for months, sometimes years. A survey of prescriptions filled at two (2) local pharmacies revealed that over 60% of Dr. Carter's prescriptions filled were for controlled substances. In Mr. McIntrye's opening statement, he asked for a motion to dismiss because of the State's lack of evidence to support the case. Dr. Eckles made a motion to deny the request to dismiss the charges and Dr. Lovelady seconded the motion. The motion carried. Carolyn White, Patricia White and Jesse Smith, all patients of Dr. Carter were called upon as a witness. Each one gave an overview of treatment given by Dr. Carter. Closing statements were given by Mr. Miller and Mr. McIntrye. The panel deliberated. Dr. Lovelady made a motion to accept the Finding of Facts with the amendment that the Finding of Facts is the Notice of Charges. Dr. Eckles seconded the motion. The motion carried. Dr. Eckles made a motion to accept the Causes of Action and Dr. Lovelady seconded the motion. The motion carried. Dr. Eckles made a motion to place Dr. Carter's Tennessee medical license on probation until the Kentucky Agreed Order is satisfied. Dr. Lovelady seconded the motion. The motion carried. The policy statement was read and the reason the actions were taken was to protect the health, safety and welfare of the citizens of the State of Tennessee. Dr. Eckles made a motion to accept the policy statement and Dr. Lovelady seconded the motion. The motion passed.

### **Agreed Order**

**Jesse Herbert, MD**-Dr. Herbert was not present but was represent by legal counsel, Mr. Dan Warlick. Mr. Thomas Miller represented the State. Dr. Herbert is charged with violating TCA 63-6-214 (b) (1). The proposed Agreed Order was handed out to the panel for review. On or about August 31, 2004, Dr. Herbert's medical license expired. On or about September 3, 2004 and October 5, 2004, Dr. Herbert wrote a prescription for controlled substances for a patient. On February 16, 2005, Dr. Herbert admitted to a Health Related Boards' Investigator that he continued to prescribe medication and did not maintain patient records for the patient after his license expired. The proposed Agreed Order stated that Dr. Herbert's medical license is formally reprimanded. Dr. Herbert

must attend and successfully complete, within one (1) year from the effective date of the Order, the "*Prescribing Controlled Drugs*" course offered at The Center for Professional Health" at Vanderbilt University Medical Center, Nashville, Tennessee. Dr. Herbert shall provide the Board's Disciplinary Coordinator with written verification of his successful completion of the course. Dr. Herbert must pay one thousand dollars (\$1,000.00) in civil penalties within six (6) months from the effective date of the Order. Dr. Lovelady made a motion to accept the proposed Agreed Order and Dr. Eckles seconded the motion. The motion passed.

**Adjourned at 6 p.m.**

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Dr. Allen S. Edmonson, Secretary

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Date